

HOGAN & HARTSON
L.L.P.

CDT 16 1998

LINDA L. OLIVER
PARTNER
DIRECT DIAL (202) 637-6527

October 16, 1998

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

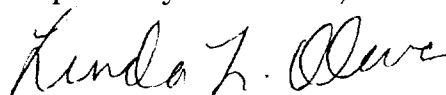
**Re: Personal Communications Industry Association's
Broadband Personal Communications Services Alliance's
Petition for Forbearance for Broadband Personal
Communications Services, CC Docket No. 98-100**

Dear Ms. Salas:

Attached for filing in the referenced docket, on behalf of the Telecommunications Resellers Association ("TRA"), are the original and nine copies of TRA's Opposition to the Petition for Reconsideration of the Personal Communications Industry Association ("PCIA").

Please contact me if you have any questions.

Respectfully submitted,



Linda L. Oliver
Counsel for Telecommunications
Resellers Association

Enclosures

FILED
OCT 16 1998
L. OLIVER

RECEIVED

Before The
Federal Communications Commission
Washington, D.C. 20554

OCT 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Personal Communications Industry Association's)
Broadband Personal Communications Services)
Alliance's Petition for Forbearance for Broadband)
Personal Communications Services)
)
Biennial Regulatory Review - Elimination) WT Docket No. 98-100
or Streamlining of Unnecessary and Obsolete)
CMRS Regulations)
)
Forbearance from Applying)
Provisions of the Communications)
Act to Wireless Telecommunications)
Carriers)

OPPOSITION TO PETITION FOR RECONSIDERATION

TELECOMMUNICATIONS RESELLERS
ASSOCIATION

David Gusky
Vice President and Director
of Wireless Services
Telecommunications Resellers
1730 K Street, N.W., Suite 1201
Washington, D.C. 20006

Linda L. Oliver
HOGAN & HARTSON, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

Counsel for the Telecommunications
Resellers Association

October 16, 1998

SUMMARY

PCIA's reconsideration petition is evidence once more of the continuing resistance of the PCS/SMR industry to compliance with one of the most basic characteristics of common carriage: nondiscriminatory treatment of all customers, including resellers. The Commission should act quickly to deny the petition and to make it clear that noncompliance with the Commission's CMRS resale policy will bring strict and speedy enforcement action.

PCIA's arguments are not new. PCIA's principal argument is that because the wireless market is increasingly competitive, resale requirements are unnecessary. To show that the market is competitive, PCIA points to the increased number of facilities-based CMRS carriers and instances of falling prices. PCIA also argues that the Commission lacked record evidence to support its conclusions. Contrary to PCIA's assertions, however, the Commission's reasoning in denying forbearance was soundly based on an analysis of the three part forbearance test and was well-supported by the record.

PCIA ignores several important factors in its simplistic approach to analyzing the market. First, the record evidence in this case shows that despite the increased number of carriers, those carriers -- including most of the new entrants -- are refusing to deal with resellers. PCIA's bland assertion that resellers will have no problems in a "competitive" market are belied by this evidence.

Second, PCIA overlooks the ways in which the broadband CMRS market is not yet fully competitive. PCS systems are not fully built out, and the

lack of number portability and the incompatibility of many consumer handsets limits consumers' ability to switch carriers. Term commitments continue to be standard, as PCIA's own petition shows.

Third, even in a market with multiple facilities-based carriers, resellers provide an important competitive spur and source of consumer choice. PCIA appears to believe that the number of facilities-based providers must also, of necessity, equal the number of service providers that a competitive market would produce. The interexchange market, which has several nationwide networks but hundreds of other resale-based carriers shows that this is certainly not the case.

Fourth, PCIA does not take into account the unique benefits that resellers provide, which facilities-based carriers by definition cannot. Resellers can, for example, offer customers a choice of a range of underlying carriers, each with different technical characteristics, pricing, and service areas. Resellers often offer service without term commitments and allow their customers to switch among carriers. Resellers also can pass on to smaller customers the low prices that otherwise would only be available to larger customers, by buying in volume.

Fifth, PCIA ignores the importance of unrestricted resale in a full-service world, and the implications of the increasing substitutability of wireless for wireline local exchange service, as the Commission pointed out.

Finally, and most fundamentally, PCIA ignores the fact that in creating the three-part forbearance test, Congress did not say "when the Commission determines that a market is competitive it shall deregulate." Instead,

Congress expected the Commission to analyze three separate criteria -- just, reasonable, and nondiscriminatory rates; consumer impact; and the public interest. The Commission conducted such an analysis here and correctly concluded that PCIA had not demonstrated that each of the criteria had been met. That conclusion was fully supported by the record and well-reasoned.

PCIA also attempts, on reconsideration, to have the Commission establish a “bright-line” test for evaluating petitions for market-by-market forbearance. Under PCIA’s proposed test, carriers could eliminate the resale requirement in any market with four facilities-based providers. The Commission lacks authority to adopt such an approach to evaluating forbearance requests. The Section 10 three-part forbearance test is complex and fact-based, and cannot be met by the mere demonstration that a particular number of carriers operate in a market, as PCIA proposes. Moreover, such a request ignores all the factors identified above and in the Commission’s Order that form the basis for the resale rule.

For these reasons, the Commission should deny PCIA’s petition for reconsideration, including its request for adoption of a bright-line market-by-market forbearance test.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	2
I. THE COMMISSION CORRECTLY CONCLUDED THAT DESPITE INCREASING COMPETITION IN THE CMRS MARKET, UNRESTRICTED RESALE REMAINS ESSENTIAL TO PROMOTING COMPETITION.	3
II. THE COMMISSION PROPERLY RELIED ON STRONG RECORD EVIDENCE OF DISCRIMINATION AGAINST RESELLERS AND OF THE CONSUMER BENEFITS OF RESALE.....	6
A. Evidence of Discrimination Against Resellers by PCS/SMR Providers	7
B. Evidence of the Benefits of Unrestricted Wireless Resale	10
III. THE COMMISSION SHOULD NOT AND CANNOT CREATE A BRIGHT LINE TEST FOR FORBEARANCE.....	13
CONCLUSION.....	16

**Before The
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Personal Communications Industry Association's)	
Broadband Personal Communications Services)	
Alliance's Petition for Forbearance for Broadband)	
Personal Communications Services)	
)	
Biennial Regulatory Review - Elimination)	WT Docket No. 98-100
or Streamlining of Unnecessary and Obsolete)	
CMRS Regulations)	
)	
Forbearance from Applying)	
Provisions of the Communications)	
Act to Wireless Telecommunications)	
Carriers)	

OPPOSITION TO PETITION FOR RECONSIDERATION

The Telecommunications Resellers Association ("TRA") hereby respectfully submits its opposition to the Petition for Reconsideration filed by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association ("PCIA"), filed on September 10, 1998, in the captioned proceeding. 1/ PCIA challenges the Commission's decision not to forbear

1/ TRA is not addressing the Petition for Reconsideration filed by Stratos Mobile Networks.

from applying resale requirements to broadband commercial mobile radio service (“CMRS”) operators. 2/

INTRODUCTION

PCIA’s reconsideration petition reflects the continued desire of the industry it represents (PCS and SMR providers) to refuse to provide service to resellers. PCIA has fought the resale requirement from the very first day. The petition for reconsideration is nothing more than a rehash of the same arguments PCIA made in opposition to the Commission’s initial decision to apply resale requirements to PCS and SMR providers, and of the arguments it made its forbearance petition.

In seeking reconsideration, PCIA ignores the forbearance that the Commission did grant them, and it ignores the fact that Congress already has substantially deregulated the wireless industry. See 47 U.S.C. § 332. Rather than comply with the resale obligation, a fundamental requirement of common carriage, PCIA and its members prefer to keep the issue alive as long as possible.

As a practical matter, the fact that PCIA continues to dispute the resale requirement fuels the willingness of many PCS and SMR operators to continue to refuse to deny service to resellers. TRA urges the Commission to act quickly to deny the PCIA forbearance petition and to make it clear that

2/ Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket No. 98-100, et al., FCC 98-134, released July 2, 1998, 63 Fed. Reg. 43033 (Aug. 11, 1998) (“Forbearance Order”).

noncompliance with the Commission's rules will bring strict and speedy enforcement action.

I. THE COMMISSION CORRECTLY CONCLUDED THAT DESPITE INCREASING COMPETITION IN THE CMRS MARKET, UNRESTRICTED RESALE REMAINS ESSENTIAL TO PROMOTING COMPETITION.

PCIA contends that the mere existence of an increased number of CMRS licensees should automatically dictate that the Commission lift virtually all regulation of the wireless market, including application of the resale requirement. PCIA's argument misses the mark in a number of respects.

First, despite the fact that there are increased numbers of carriers licensed to provide CMRS, the market is not yet "fully competitive." The new PCS systems are still not fully built out. PCS systems still cannot fully compete with existing cellular systems for a number of reasons, including the lack of number portability and the lack of PCS buildout to the same geographic boundaries. In addition, as the National Wireless Resellers Association observed in its comments in opposition to PCIA's forbearance petition, there are many ways in which the CMRS market is not yet competitive from the perspective of resellers and the customers they serve. 3/

PCIA completely ignores the record evidence in this docket that resellers are frequently denied the ability to resell the offerings of PCS and SMR

3/ Comments of the National Wireless Resellers Association ("NWRA"), July 2, 1997, in WT Docket No. 98-100, at 3-10 ("NWRA Comments"). NWRA merged with TRA on October 31, 1997.

providers. ^{4/} PCIA apparently believes that the Washington, DC. area market is a good example of one that should be exempt from the resale obligation. From PCIA's own chart, however, it appears that there are only four facilities-based carriers in the Washington, D.C. area. (PCIA counts each of the cellular companies twice because they have both analog and digital offerings). PCIA uses this chart to show that term contracts are not a problem in the industry. But even its own evidence shows that only one of the carriers is willing to offer service without a term agreement. Resellers commonly offer service without any term agreements, thereby making it easy for customers to shift among carriers if they can get a better deal from elsewhere. Washington, D.C. also is one of the more competitive markets in the country. Yet to TRA's knowledge, there are no companies reselling PCS or SMRS in Washington, D.C. area. This particular example is only one of many, showing that despite the existence of multiple CMRS providers, resellers have difficulty obtaining the ability to resell PCS and SMRS.

Second, just because a market has several facilities-based providers does not mean that a resale requirement is not important to protect consumers and the public interest. PCIA ignores, for example, the fact that in a full service world, every service provider will need to provide wireless services as part of full service

^{4/} See, e.g., NWRA Comments at 4 and Exhibit A (NWRA survey); WorldCom Inc. Comments at 13; Letter to Chairman William Kennard from Ernest B. Kelly III, President, TRA, Feb. 10, 1998, and attached "1997 Year-End Survey of Wireless Resellers" (filed in WT Docket 98-100); Letter to Magalie R. Salas from Linda L. Oliver, April 22, 1998 (ex parte notice summarizing meeting with Commissioners). See also Forbearance Order at para 38.

offering. Without resale, the number of providers of full service packages will be limited to the number of wireless networks. PCIA also makes light of the Commission's view that wireless increasingly is a substitute for wireline local exchange service, and that for this reason too, preservation of unrestricted resale is important to preserve to protect consumers.

At bottom, PCIA's petition boils down to the contention that the Commission need only look at the number of competitors in a market to conclude that that number is enough. PCIA would put that number at four, apparently. ^{5/} PCIA also apparently contends that if there are no resale competitors in a market, that is fine, because whatever the number of facilities-based providers, that is enough.

But competition in a market should not be limited at any particular number of competitors. Rather, consumers and the marketplace should decide how many service providers is the optimal number. In the interexchange market, where hundreds of competitors provide service, the marketplace has not chosen to limit the number of service providers to the number of facilities-based carriers. Resale requirements in that market have been an important contributor to competition, and can do the same in the wireless market. PCIA and its members would prefer to maintain a market in which they can control who competes against them, by retaining the right to deny service to a reseller.

^{5/} See PCIA Reconsideration Petition at 23-24.

PCIA also overlooks the fact that resale requirements are actually deregulatory in character. Resale is a substitute for direct regulation of the underlying carrier's prices. Because resellers can buy in volume, taking advantage of volume discounts, they are able to compete away non cost-based price discrimination between large and small customers.

Most fundamentally, PCIA ignores the fact that Congress, in the forbearance provision, did not say "when the Commission determines that a market is competitive it shall deregulate." Rather, Congress created a very careful three-part test that includes not merely a determination that rates will be just, reasonable, and nondiscriminatory with forbearance, but also includes an evaluation of the effect of forbearance on consumers and the public interest. The Commission would be acting arbitrarily and capriciously if it were to determine that merely because a market has a certain number of competitors, or that prices have begun to fall, that the three-part test has been met. Rather, the Commission is obligated to examine each part of that test, which they did in the Forbearance Order. PCIA's real complaint is that the Commission reached a different conclusion than PCIA would have preferred. As we discuss in the next section, the Commission's conclusion was fully supported by record evidence and well reasoned.

II. THE COMMISSION PROPERLY RELIED ON STRONG RECORD EVIDENCE OF DISCRIMINATION AGAINST RESELLERS AND OF THE CONSUMER BENEFITS OF RESALE.

PCIA, incredibly, claims that the Commission had no record evidence that resellers had difficulty in obtaining resale and that the Commission lacked

record evidence of the benefits of wireless resale. On both of these points the Commission has substantial evidence on which to rely.

A. Evidence of Discrimination Against Resellers by PCS/SMR Providers

First, the Commission had ample record evidence to show that resellers are being frustrated in their ability to obtain resale from PCS and SMR providers. ^{6/} NWRA (and later TRA) provided the Commission with surveys of their reseller members that documented resellers' general inability to engage in PCS/SMR resale or to obtain resale agreements from PCS and SMR providers. Other evidence of discrimination against resellers was introduced into the record by WorldCom and by Touch One. The Commission correctly concluded that this evidence was not successfully refuted. ^{7/}

PCIA fundamentally rests its argument for forbearance on a supposition, not founded in fact, that in the absence of a resale requirement, resellers will not have any problems reselling carriers' services. PCIA asserts, for example:

[E]xperience shows that, in an industry as competitive as CMRS, unjust or unreasonable charges, practices, or classifications will not survive. Specifically, carriers engaging in such

^{6/} See n. 4, supra.

^{7/} WorldCom Comments at 13; Touch One Reply Comments at 1-2. In its reconsideration petition, PCIA lists the responses of the various carriers who had been identified by resellers as resisting resale. PCIA Reconsideration Petition at 13, n. 42. The Commission correctly concluded that these carrier responses did not adequately refute the allegations of WorldCom, Touch One and NWRA/TRA. Forbearance Order at 38 & n. 115.

practices will not thrive because customers, including resellers, that are greeted by anticompetitive activities will go to another operator and obtain service at rates they consider just and reasonable. 8/

This assertion is laughable. If, as was demonstrated in the comments in this proceeding and in the NWRA/TRA survey, resellers have been frustrated by virtually all PCS and SMR providers, there will not *be* another operator for resellers to turn to. PCIA also overlooks the fact that resale should be available from *any* carrier, not just the ones who choose to deal with resellers, if the maximum consumer and competitive benefits of resale are to be available. In short, the marketplace will not guarantee that unrestricted resale will be available in the absence of a rule.

PCIA also takes aim at the surveys conducted by NWRA and TRA in an attempt to cast aspersions on the validity of those surveys. 9/ The questions set forth in the survey, however, were entirely straightforward and not, as PCIA claims, “misleading inquiries designed to produce the answers NWRA and TRA desire.” 10/ The responses to the survey questions document the difficulties resellers have had in securing the ability to resell PCS or SMR services.

8/ PCIA Reconsideration Petition at 12.

9/ PCIA Reconsideration Petition at 13-14.

10/ PCIA Reconsideration Petition at 14. The NWRA 1997 survey of wireless resellers posed the following questions, among others, which formed the basis for the Commission’s conclusion that there record evidence that resellers were having difficulty obtaining agreements with PCS and SMR providers:

PCIA attempts to avoid the implications of the results of the NWRA/TRA survey by asserting that CMRS providers do not have the obligation to offer a resale agreement to resellers. ^{11/} This is a red herring. No underlying carrier could engage in a relationship with a reseller under the terms of a retail service contract. The terms of a resale agreement protect both the underlying carrier and the reseller. A resale agreement would contain provisions governing, for example, rates, payment terms, volume commitments, allocation of liability, provision of billing information, and termination penalties. The Commission has already made it clear that both direct and indirect restrictions on resale are

Has the **PCS** carrier operating in company(s) market at least ninety days failed to produce a resale agreement despite company's efforts to secure such an agreement? (Yes or No)

During the past year has a **cellular, PCS, or SMR** carrier offered specific bulk discounts for at least ninety days to similarly sized or smaller retail customers but has not made the discounts available to the company? (Yes or No)

From NWRA Survey Form, Attached to Exhibit A to Comments of the National Wireless Resellers Association, July 2, 1997, in WT Docket No. 98-100. The 1997 Year End Survey results, which are also a part of this record, showed that

nearly 90% of respondents who have sought to resell PCS have been denied the opportunity to do so. The percentage climbs to a remarkable 100% -- a complete shutout -- for respondents who would like to resell SMR services.

Letter to Chairman William Kennard from Ernest B. Kelly III, President, TRA, Feb. 10, 1998, and attached "1994 Year-End Survey of Wireless Resellers" (filed in WT Docket 98-100).

^{11/} PCIA Reconsideration Petition at 16-17 and n. 53.

unlawful. ^{12/} If a PCS or SMR provider flatly refuses to offer a resale agreement to a potential reseller, that constitutes both a direct and indirect restriction on resale. A reseller customer may not have the right to better rates than the retail customer, but it does have the right to enter into an agreement that protects both the underlying carrier and the reseller.

In any event, the bottom line is that PCS and SMR carriers are refusing to deal with resellers, and are treating them in an unjust, unreasonable and discriminatory manner, in violation of both Sections 201(b) and 202(a) of the Act, as well as the Commission's resale rule. ^{13/} It is clear that market forces have not eliminated the incentives for underlying carriers to discriminate and engage in anticompetitive and unreasonable conduct with respect to resellers, and this conduct has a direct impact on consumers, as the Commission correctly found in the Forbearance Order. ^{14/}

B. Evidence of the Benefits of Unrestricted Wireless Resale

PCIA also challenges the record support for the Commission's conclusion that resellers provide many benefits to consumers. ^{15/} Again, there was substantial record evidence to support the Commission's conclusion, all of which

^{12/} Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, First Report and Order, CC Docket No. 94-54, 11 FCC Rcd 18455, FCC 96-23, released July 12, 1996, at ¶ 12 ("CMRS Resale Order").

^{13/} 47 U.S.C. §§ 201(b), 202(a); 47 C.F.R. § 20.12(b).

^{14/} Forbearance Order at ¶¶ 38-40.

^{15/} PCIA Reconsideration Petition at 18-19.

PCIA ignores. 16/ Wireless resellers today provide service to almost 2 million customers. If they were not providing real benefits to those customers, they wouldn't be in business. PCIA acknowledges that resellers bring many benefits to consumers, but then says, in effect "we'll just take care of that" without the need for resellers.

PCIA also claims that "the market is producing all of the benefits that the Commission hopes to promote through continued enforcement of this CMRS resale rule." 17/ However, the drop in prices for CMRS offerings and the increased variety of innovative services and packages hardly show that resale competition is not important. First, resellers have contributed to that increased price and service competition in the CMRS market. Second, there is no reason that consumers should be deprived of as many choices as possible for service. Third, just because the facilities-based carriers are behaving in a more competitive manner now does not mean that resellers may not or cannot bring additional benefits to consumers, just as they have in the interexchange market. Finally, resellers bring benefits to consumers that facilities-based carriers cannot. For example, as NWRA pointed out in its comments, resellers are uniquely able to offer customers a choice of services based on multiple underlying CMRS networks -- each of which offer different

16/ Forbearance Order at 35. See, e.g., NWRA Comments, filed July 2, 1997, at 10-16; Letter to Chairman William Kennard from Ernest B. Kelly II, President, TRA, Feb. 10, 1998, and attached 1997 Year-End Survey of Wireless Resellers; Letter to Magalie R. Salas from Linda L. Oliver, April 22, 1998 (ex parte notice summarizing meeting with Commissioners) at 2-3.

17/ PCIA Reconsideration Petition at 15.

advantages and disadvantages, including technology type, coverage areas, roaming arrangements and other service terms. Resellers can tailor a service package to suit each customer's particular mix of needs. 18/

Resellers also are more likely to offer lower prices to smaller customers, because they can take high volume discounted services from carriers and resell them at lower rates. While PCIA correctly asserts that its members do provide service to small business and residential customers, 19/ the fact remains that resellers historically have served an important function in passing on volume discounted rates to smaller customers. They also historically have identified consumer needs that are unserved by the existing carriers, as they must in order to break into a market in which they lack network facilities of their own. 20/

In sum, the Commission should disregard PCIA's attack on the Commission's Forbearance Order. PCIA's assertion that the market alone will bring the benefits of resale to consumers simply is not credible. As PCIA puts it:

[H]istory and experience have shown that, in markets bearing the competitive characteristics of the CMRS marketplace, resale will flourish as a natural by-product of carriers' efforts to maximize revenues through increased distribution and growth of their offerings.

18/ NWRA Comments at 14.

19/ PCIA Reconsideration Petition at 19.

20/ Other benefits offered by resellers are detailed in NWRA's Comments at 14-15 as well as in the Commission's Forbearance Order at ¶ 35. See PCIA Reconsideration Petition at 19.

This assertion flies in the face of the record in this case. If and when the market changes so that this assertion reflects reality, then PCIA can return to the Commission with another forbearance petition. In the meantime, the resale rule is absolutely necessary to protect consumers and to promote competition in the wireless marketplace.

III. THE COMMISSION SHOULD NOT AND CANNOT CREATE A BRIGHT LINE TEST FOR FORBEARANCE.

PCIA complains about the Commission's offer to consider requests for forbearance on a market-by-market basis. 21/ PCIA also complains about the "vagueness and imprecision" of the Commission's proposed factors for considering market-by-market forbearance requests 22/

First, PCIA should not be heard to complain about the Commission's willingness to consider market-by-market forbearance filings. This willingness benefits PCIA and its members. If PCIA does not want to take advantage of the opportunity to make such filings, it does not have to. In fact, TRA objects to the Commission's invitation to carriers to request forbearance on a market-by-market basis, in part because of the resource demands it will put on the Commission and interested parties, and in part because TRA believes that the resale rule should apply regardless of competitive conditions in the market. In TRA's view, a resale

21/ PCIA Reconsideration Petition at 21-23; Forbearance Order at para. 44.

22/ PCIA Reconsideration Petition at 22.

obligation will not harm a carrier if it is willing to deal with resellers in a nondiscriminatory manner, but is necessary if a carrier is failing to do so.

Second, PCIA complains that the Commission's proposed "test" for market-by-market forbearance is vague. But any such "test" must of necessity be vague, because the *statutory* test for forbearance is complex and fact-based. It remains the obligation of the party seeking forbearance to prove that it has met each of the statutory criteria.

PCIA suggests that the Commission should adopt a "bright line" test for evaluating market-by-market petitions for forbearance, in order to speed forbearance and in order to save on administrative resources. Specifically, PCIA proposes that when there are four or more CMRS providers in a single BTA, then forbearance should automatically be granted. 23/ Such a "self-effectuating" procedure would be unlawful, however. Under Section 10, the Commission must evaluate the three criteria in every case in which forbearance is sought. Because this is a fact-based and complex inquiry, a bright line test has no place. Moreover, it should be evident from the record in this case that even if there are four facilities-based CMRS providers in a market, that in no way indicates that resellers will be able to function without problems. Even in such markets, resellers have encountered numerous difficulties in reselling the services of PCS and SMR providers.

23/ PCIA Reconsideration Petition at 23-24.

The Commission needs to be clear about what PCIA's real goal here is. It is not to eliminate an unnecessary or superfluous rule. Rather, it is to be given carte blanche to discriminate against resellers and to deny them service. As TRA has contended from the beginning, the resale rule is really a prophylactic rule. When the market has developed to the point where underlying carriers have strong incentives to deal fairly with resellers, and to treat them as they would treat any other customer, then the rule will have no real effect on the carriers. On the other hand, if a market has not reached that point, or if there is a carrier that for anticompetitive reasons refuses to deal with a reseller competitor, then the rule is there to ensure that the carrier will not discriminate against resellers.

Put differently, PCIA's members have nothing to fear if they indeed are engaging fairly in their dealings with resellers. If they are not, however, then the rule is needed. As PCIA puts it, "PCIA is not opposed to resale per se, only to mandated resale." 24/ What PCIA means, however, is that PCIA does not believe that any facilities-based carriers should have to permit resale, but rather that it ought to happen by itself. As discussed above, the record shows that resale has not happened by itself. In TRA's view, moreover, it is unlikely to happen in the future without a resale requirement firmly in place. If such a requirement is in place, the carriers will understand that they must deal with resellers fairly. Resale then may truly take hold and, if it is indeed in the interest of carriers to have resellers present, resale will flourish.

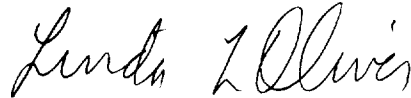
24/ PCIA Reconsideration Petition at 17.

In sum, the Commission should decline PCIA's unreasonable request to establish a bright line test for forbearance, and instead should affirm its original denial of forbearance. The Commission should refuse to consider any market-by-market request for forbearance until conditions have significantly changed in those markets.

CONCLUSION

For the reasons given, the Commission should deny PCIA's request for reconsideration.

Respectfully submitted,
TELECOMMUNICATIONS RESELLERS
ASSOCIATION



Linda L. Oliver
HOGAN & HARTSON, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

David Gusky
Vice President and Director
of Wireless Services
Telecommunications Resellers
1730 K Street, N.W., Suite 1201
Washington, D.C. 20006

Counsel for the Telecommunications
Resellers Association

October 16, 1998

CERTIFICATE OF SERVICE

I, Linda L. Oliver, hereby certify that on this 16th day of October, 1998, copies of the foregoing Opposition of the Telecommunications Resellers Association to the Personal Communications Industry Association Petition for Reconsideration were served by hand delivery (where indicated) or by first class mail to the following:

Mark Golden
Senior Vice President, Industry Affairs
Personal Communications Industry
Association
500 Montgomery Street, Suite 700
Alexandria, VA. 22312

R. Michael Senkowski*
Katherine M. Holden
Angela N. Watkins
Wiley, Rein & Fielding
1776 K Street, N.W.,
Washington, D.C. 20006

Gerald S. McGowan
Terry J. Romine
Lukas McGowan Nace & Guttierrez
1111 Nineteenth Street, N. W.
Suite 1200
Washington, D.C. 20036

Richard S. Myers
Jay N. Lazrus
Myers Keller Communications Law
Group
1522 K Street, N. W., Suite 1100
Washington, D.C. 20005

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
WorldCom, Inc.
1120 Connecticut Ave., N. W.
Suite 400
Washington, D.C. 20036

David N. Porter
Anne La Lena
WorldCom, Inc.
1120 Connecticut Ave., N.W.
Suite 400
Washington, D.C. 20036

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications Industry
Association
1250 Connecticut Ave., N.W.
Suite 200
Washington, D.C. 20036

John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Caressa D. Bennet
Gregory W. Whiteaker
Bennet & Bennet, PLLC
1019 Nineteenth Street, N. W., Suite 500
Washington, D.C., 20036

Mark J. Tauber
Mark J. O'Connor
Teresa M. Schmitz
Piper & Marbury L.L.P.
1200 Nineteenth Street, N. W.
Suite 700
Washington, D.C. 20036

* indicates by hand delivery

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N. W., Suite 701
Washington, D.C. 20006

Jay L. Birnbaum
Jennifer B. Brovey
Skadden, Arps, Slate, Megher & Flom
LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Jay L. Birnbaum
David H. Pawlik
Skadden, Arps, Slate, Megher & Flom
LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

GTE Service Corporation
Andre J. LaChance
1850 M Street, N. W.
Suite 1200
Washington, D.C. 20036

William B. Barfield*
Jim O. Llwellyn
BellSouth Corporation
1155 Peachtree Street, N. W., Suite 1800
Atlanta, GA 30309-2641

David G. Frolio
David G. Richards
1133 21st Street, N. W.
Washington, D.C. 20036

Cathleen A. Massey
Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Ave., N. W., Suite 400
Washington D.C. 20036

Howard J. Symons
Sara F. Seidman
Michelle M. Mundt
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N. W.
Suite 900
Washington, D.C. 20004

Paul C. Besozzi
Janet Fitzpatrick
Patton Boggs, L.L.P.
2550 M Street, N. W.
Washington, D. C. 20037

Jill Lyon
Director of Regulatory Relations
American Mobile Telecommunications
Assn.
1150 18th Street, N. W., Suite 250
Washington, D.C. 20036

Elizabeth R. Sachs,
Lukas, McGowan, Nace & Guttierrez
1111 19th Street, N. W., Suite 1200
Washington, D.C. 20036

Jena L. Kiddoo
William B. Wilhelm
Swidler & Berlin, Chtd.
3000 K Street, N. W., Suite 300
Washington, D. C. 20007

Genevieve Morelli
Executive Vice President and General
Counsel
CompTel
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Mary E. Brooner
Assistant Director
Telecommunications Strategy and
Regulations
Corporate Government Relations Office
Motorola, Inc.
1350 I Street, N.W., Suite 400
Washington, D.C. 20005

Jeffrey L. Sheldon, General Counsel
Sean A. Stokes, Associate Gen. Counsel
UTC, The Telecommunications Assoc.
1140 Connecticut Ave., N.W.
Suite 1140
Washington, D.C. 20036

David E. Screven*
Assistant Counsel
PaPUC Law Bureau
P. O. Box 3265
Harrisburg, PA 17105

Jeffrey E. Smith*
Senior Vice President and General
Counsel
480 Swedesford Road
Wayne, PA 19087

Laura H. Phillips
Christina H. Burrow
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., N.W.
Suite 800
Washington, D.C. 20036

Jill Canfield
Regulatory Counsel
NTCA
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

Paul J. Sinderbrand
Robert G. Morse
Wilkinson, Barker, Knauer & Quinn
2300 N. Street, N.W.
Washington, D.C. 20037

Ari Fitzgerald*
Legal Advisor to Chairman William E.
Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Kevin Martin*
Legal Advisor to Commissioner Harold
Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Daniel Connors*
Legal Assistant to Commissioner Susan
Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Peter A. Tenhula*
Legal Assistant to Commissioner Michael
K. Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Karen Gulick*
Legal Advisor to Commissioner Gloria
Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

John Nakahata*
Chief of Staff
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Daniel Phythyon, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind Allen, Deputy Bureau Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

David Furth*
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202-D
Washington, D.C. 20554

Sandra Danner*
Deputy Chief, Commercial Wireless
Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., Room 7130-K
Washington, D.C. 20554

Ramona Melson*
Chief of the Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., Room 7102
Washington, D.C. 20554

Laura Smith*
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8010
Washington, D.C. 20554

Jeffrey Steinberg*
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission

2025 M Street, N.W., Room 7030
Washington, D.C. 20554

John Cimko*
Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002-B
Washington, D.C. 20554

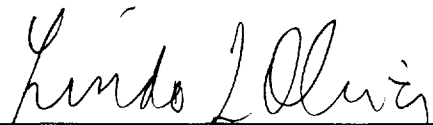
Nancy Boocker*
Deputy Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002-A
Washington, D.C. 20554

Steve Weingarten*
Legal Assistant to Policy Division Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7023
Washington, D.C. 20554

Christopher Wright*
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

Office of Public Affairs*
Reference Operations Division
Wireless Telecommunications Branch
2025 M Street, N.W., Room 5608
Washington, D.C. 20554

ITS*
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037



Linda L. Oliver